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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte YANG CAO

Appeal 2009-011823
Application 09/620,053
Technology Center 2400

Before THOMAS S. HAHN, BRADLEY W. BAUMEISTER, and
ANDREW CALDWELL, *Administrative Patent Judges*.

BAUMEISTER, *Administrative Patent Judge*.

DECISION ON APPEAL

SUMMARY

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-10, 12-23, 25-31, 33-38, and 40-42:

Claims 1 and 12 stand rejected under 35 U.S.C. § 103(a) as obvious over to Chang ("Chang '412") (US 5,920,412; issued July 6, 1999) in view of Chang ("Chang '757") (US 6,657,757 B1; issued Dec. 2, 2003);

Claims 2, 3, 7, 13, 14, 18, 28, and 33 stand rejected under 35 U.S.C. § 103(a) as obvious over Chang '412 in view of Chang '757 and Dail (US 5,570,355; issued Oct. 29, 1996);

Claims 4-6 and 15-17 stand rejected under 35 U.S.C. § 103(a) as obvious over Chang '412 in view of Chang '757, Dail, and Brueckheimer (US 6,574,224 B1; issued June 3, 2003);

Claims 8, 19, 29, and 34 stand rejected under 35 U.S.C. § 103(a) as obvious over Chang '412 in view of Chang '757, Dail, and Caldara (US 5,982,771; issued Nov. 9, 1999);

Claims 9, 20-22, 25-27, 30, 35-37, and 40-42 stand rejected under 35 U.S.C. § 103(a) as obvious over Chang '412 in view of Chang '757, Dail, and Houji (US 5,832,197; issued Nov. 3, 1998); and

Claims 10, 23, 31, and 38 stand rejected under 35 U.S.C. § 103(a) as obvious over Chang '412 in view of Chang '757, Dail, Houji, and Brueckheimer.

We have jurisdiction under 35 U.S.C. § 6(b). We review the appealed rejections for error based upon the issues identified by Appellant, and in light of the arguments and evidence produced thereon. *Cf. Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (citing *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992)).

We reverse.

STATEMENT OF CASE

Appellant describes the present invention as follows:

A telecommunications management system and method in accordance with the principles of the present invention includes facilities for managing telecommunications switching in a system that includes both circuit switching and packet switching facilities. The circuit switching facilities may use a Synchronous Transport Signal (STS) crossconnect with interfaces to SONET rings, for example, while the packet switching facility switches ATM cells. In one aspect of the invention, real-time traffic, such as voice traffic, may be separated from non-real-time traffic, such as Internet email traffic. Once separated, the real time traffic may be switched through a synchronous transfer mode (STM) switch fabric, which may also be referred to herein as a circuit-switched switch or time division multiplexed (TDM) switch fabric. The non-real-time traffic may be switched through an asynchronous transfer mode (ATM) switch fabric.

(Spec. 4:15-25).

Independent claim 1 is illustrative of claims 12, 28, and 33:

1. A hybrid telecommunications switch comprising:
 - at least one circuit switch fabric;
 - at least one packet switch fabric; and
 - a controller configured to route IP traffic to the circuit switch fabric or packet switch fabric, depending on an ATM service category of the IP traffic.

CONTENTIONS

The Examiner finds Chang '412 teaches a controller configured to route traffic to a circuit switch fabric or packet switch fabric depending on

an asynchronous transfer mode (“ATM”) service category of the traffic (Ans. 5). The Examiner relies on an embodiment of Chang ‘412 wherein a type check is implemented to determine whether a signal is an ATM signal or synchronous transfer mode (“STM”) signal based on the wavelength of the signal (Ans. 24 (citing Chang ‘412, col. 12, ll. 10-36)). Specifically, the Examiner interprets the wavelength of the signal as the claimed “ATM service category” (Ans. 24 (citing Chang ‘412, col. 13, ll. 41-50)).

Appellant asserts, *inter alia*, that optical wavelengths are not ATM service categories (App. Br. 7), and, therefore, the combination of Chang ‘412 and Chang ‘757 fails to describe, teach, or suggest routing IP traffic to a circuit switch fabric or patch switch fabric depending upon the service category of the IP traffic (App. Br. 5).

ANALYSIS

“[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc). It is the use of the words in the context of the written description and as they are customarily understood by those skilled in the relevant art that accurately reflects both the “ordinary” and the “customary” meaning of the terms in the claims. *Ferguson Beauregard/Logic Controls, Div. of Dover Res., Inc. v. Mega Sys., LLC*, 350 F.3d 1327, 1338 (Fed. Cir. 2003).

[The claims] are part of a fully integrated written instrument, consisting principally of a specification that concludes with the claims. For that reason, claims must be read in view of the

specification . . . [T]he specification is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.

Phillips, 415 F.3d at 1315 (citations omitted) (internal quotation marks omitted).

The Examiner's interpretation of the phrase "ATM service category" is inconsistent with Appellant's disclosure. We interpret an ATM service category in accordance with Appellant's Specification, which employs the term to indicate the quality of service requirements and traffic rate of ATM traffic (App. Br. 7 (citing Spec. 10:5-10); Spec. 13-14). That is, an ATM service category connotes some specific type or subset of ATM traffic.

Chang '412 discloses routing signals through an optical network using either a STM switch or an ATM switch (Chang '412, col. 4, ll. 27-54). Prior to routing a signal to its destination, a type check method determines whether the signal is a STM signal or an ATM signal based on the signal's wavelength (Ans. 24 (citing Chang '412, col. 13, ll. 41-50)). The type check, however, does not account for the differing service levels, or specific types, of ATM traffic. Rather, the type check merely determines whether the traffic is ATM traffic itself (*see, e.g.*, Chang '412, col. 12, ll. 18-47). As such, Chang '412 fails to teach or suggest a controller configured to route traffic to the circuit switch fabric or packet switch fabric depending on an ATM service category of the traffic.

In the RESPONSE TO ARGUMENT section of the Examiner's Answer, the Examiner newly cites the teachings of "Network Working Group Request for Comments 2381: Interoperation of Controlled-Load Service and Guaranteed Service with ATM" ("RFC2381") in relation to claim 1 (Ans. 20-21). RFC2381 was not relied upon in the Final Rejection of claim 1 that

is presently on appeal (*see* Ans. 5; Final Rej. (mailed Mar. 5, 2008)). We therefore view the Examiner's reference to RFC2381, at pages 24-26 of the Answer, as an improper effort to bring this reference in the "back door." *See In re Hoch*, 428 F.2d 1341, 1342 n.3 (CCPA 1970) ("Where a reference is relied on to support a rejection, whether or not in a 'minor capacity,' there would appear to be no excuse for not positively including that reference in the statement of the rejection."). Accordingly, we consider the rejection under 35 U.S.C. § 103 based solely on the evidence contained in the cited references.

We therefore do not sustain the Examiner's obviousness rejection of independent claim 1, or of independent claim 12, which also recites "routing IP traffic . . . , depending on an ATM service category of the IP traffic."

With respect to the additional rejections of claims 2-10, 13-23, 25-31, 33-38, and 40-42, the only other independent claims are claim 28 and 33. Independent claims 28 and 33 also recite routing "IP traffic . . . , depending on an ATM service category of the IP traffic." The Examiner does not rely on any of the additionally cited references, Dail, Brueckheimer, Caldara, or Houji, to cure the deficiency of the obviousness rejections explained above. Accordingly, we do not sustain the obviousness rejections of claims 2-10, 13-23, 25-31, 33-38, and 40-42, for the reasons noted in relation to independent claims 1 and 12.

DECISION

The Examiner's decision rejecting claims 1-10, 12-23, 25-31, 33-38, and 40-42 is reversed.

Appeal 2009-011823
Application 09/620,053

REVERSED

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